

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1056
Judiciary

(Delegate Petzold)

Criminal Law - Sexual Abuse of a Minor - Person in Position of Authority

This bill prohibits a person in a position of authority from causing sexual abuse to a minor, including when the minor is not in the person's care or custody or under the person's supervision. A "person in a position of authority" is defined as a person at least 21 years of age who exercises influence or supervision over a minor due to position or occupational status, except where the minor is employed for pay in a licensed business. This includes an employee at an educational institution that a minor attends.

A person who violates this provision is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000. A sentence imposed may be separate from and consecutive to, or concurrent with, a sentence for any crime based on the act or acts establishing this violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's incarceration penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's incarceration penalty provision.

Small Business Effect: None.

Analysis

Current Law: There is no general prohibition against consensual sex with any person 16 or older. Correctional facility and juvenile facility employees are prohibited from

engaging in vaginal intercourse or a sexual act with an inmate. The crime of fourth degree sexual offense prohibits a person from engaging in a sexual act or vaginal intercourse with a victim who is 14 or 15 years old and the defendant is at least four years older than the victim. Consensual sex with a person under the age of 14 is generally prohibited. Depending on the age of the victim and the circumstances of the event, a person unlawfully engaging in sexual acts with a minor could be subject to a charge of second degree rape or second, third, or fourth degree sexual offense. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to one year (for a misdemeanor fourth degree sexual offense) to maximum imprisonment of 20 years (for the felony of second degree rape).

“Sexual abuse” means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. Sexual abuse includes rape, incest, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices. Under the State’s prohibition against sexual child abuse (applicable when the victim is under 18 years of age) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment of 25 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim less than 14 years of age. A violator is guilty of a felony and is subject to imprisonment not exceeding 30 years. A sentence imposed for this violation may be separate from and consecutive to, or concurrent with, a sentence for child abuse.

State Revenues: General fund revenues could increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12

and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: Two bills addressing sexual offenses against a minor by a "person in position of authority" were introduced in 2004. HB 302 of 2004 passed the House, was heard in the Judicial Proceedings Committee, and had no further action taken on it. HB 1084 of 2004 received an unfavorable report from the Judiciary Committee. HB 592 of 2003, a similar bill, was heard in the Judiciary Committee, but received no further action.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2005
mp/jr

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510